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Before the
Federal Communications Commission
Washington, D.C. 20554

APR 29 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
)
MOBILEMEDIA CORPORATION, et al.) WT DOCKET NO. 97-115
)
Applicant for Authorizations and Licensee)
of Certain Stations in Various Services)

To: Administrative Law Judge Joseph Chachkin

WIRELESS TELECOMMUNICATIONS BUREAU'S
COMMENTS ON EMERGENCY MOTION

1. On April 23, 1997, MobileMedia Corporation and its subsidiaries ("MobileMedia") filed an Emergency Motion for Special Relief and Stay of Proceedings Regarding MobileMedia Corporation ("Emergency Motion"). MobileMedia requests a stay of this proceeding, which was commenced by the Commission to inquire into the basic qualifications of MobileMedia to remain a licensee. See Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 97-124 (released April 8, 1997) ("Show Cause Order"). MobileMedia requests a stay in order to seek relief under the Commission's doctrine established in Second Thursday Corp., 22 FCC 2d 515 recon. granted, 25 FCC 2d 112 (1970) ("Second Thursday doctrine"). MobileMedia states that although the instant situation is one of first impression, reliance on the Second Thursday doctrine is both justified and warranted in this instance. For the reasons discussed below, the Acting Chief, Wireless Telecommunications Bureau, by his attorneys, supports, in principle, a stay of this

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proceeding for the purpose advanced by MobileMedia.¹ However, the Bureau requests that the Commission attach terms and conditions to the grant of such stay.

2. As a general rule, the Commission will not authorize an assignment of license or transfer of control of a licensee where issues about the character qualifications of the licensee are pending. Jefferson Radio Corp., Inc. v. FCC, 340 F.2d 781 (D.C. Cir. 1964). However, the Commission has carved out a narrow exception to this rule in the case of a licensee in bankruptcy, in recognition of the public interest in protecting innocent creditors and to accommodate the policies of federal bankruptcy law with those of the Communications Act. Thus, in cases where issues about the character qualifications of a licensee in bankruptcy are pending, the Commission has approved an application for consent to the assignment of license or for transfer of control of a licensee, provided the licensee has demonstrated fully and completely to the Commission's satisfaction that suspected wrongdoers: (a) will have no part in the future operations of the licensed facilities; and (b) will derive no benefit from the grant of the assignment or transfer application, or will receive only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors. Second Thursday Corp. 22 FCC 2d at 516.

3. MobileMedia acknowledges that the Commission has typically granted relief under the Second Thursday doctrine to privately-held licensees of broadcast authorizations. In

¹ The Bureau anticipates that the question of granting MobileMedia's request for a stay of this proceeding will be certified to the Commission because it relates to the disposition of this proceeding. See Show Cause Order at ¶¶ 13, 15.

contrast, MobileMedia is a large publicly traded licensee of common carrier paging authorizations. The Bureau submits that although these distinctions may complicate application of the Second Thursday doctrine, they should not serve to bar MobileMedia from seeking relief under the Second Thursday doctrine. Indeed, the public interest and policy considerations underlying application of the Second Thursday doctrine to privately held broadcast licensees are equally germane to publicly traded common carrier paging licensees. Furthermore, the Commission's Second Thursday doctrine analysis is identical regardless of the type of licensee involved. Thus, in every instance, the Commission must engage in an "ad hoc balancing of the possible injury to regulatory authority that might flow from wrongdoers' realization of benefit against the public interest in innocent creditors' recovery from the sale and assignment of the license to a qualified party." LaRose v. FCC, 494 F.2d 1145, 1149 (D.C. Cir. 1974). Finally, the Commission's interest in accommodating the policies of federal bankruptcy law with those of the Communications Act are no less compelling in a common carrier paging proceeding than they are in a broadcast proceeding.

4. It appears that this case falls within the class of cases for which Second Thursday relief was contemplated: (1) there are basic qualifying issues pending against MobileMedia; (2) the Company has filed for protection under Chapter XI of the U.S. Bankruptcy Code; and (3) a significant number of innocent creditors of the Company stand to lose substantial sums of money in the event of an adverse decision by the Commission. This is not to say, however, that Second Thursday relief should be entertained in every case involving a licensee in bankruptcy against which basic qualifying issues are pending. In each such case, the

Bureau believes that the Commission should carefully balance the interest in protecting innocent creditors with the detriment to its regulatory processes as a consequence of foregoing rigorous inquiry into suspected misconduct.² In the instant case, the Bureau believes that the potential benefit to innocent creditors as well as the importance of maintaining service to millions of paging subscribers outweigh the public's immediate interest in conducting an inquiry into the qualifications of MobileMedia, provided MobileMedia satisfies all requirements of Second Thursday. In this regard, MobileMedia avers that it is "irrevocably committed to pursuing [a remedy] that is fully and strictly consistent with the Second Thursday precedent." Moreover, any questions that may linger concerning the involvement in MobileMedia's alleged misconduct by its various present and former officers and directors -- some of whom, individually, have interests in other Commission licenses and applications -- may be resolved through further investigations or in other adjudicatory proceedings, at the Commission's discretion and explicit direction. Accordingly, MobileMedia should not be precluded from interposing a request for Second Thursday relief in the context of this proceeding.

5. The Commission generally employs a four-part test in determining whether to grant a motion for stay. This test requires the movant to address: (a) the likelihood of success on the merits of the underlying dispute; (b) the probability of irreparable harm in the absence of

² "The Commission cannot shirk its responsibilities under the Act to review unresolved character questions concerning its licensees -- irrespective of the legitimate, equitable interests of innocent creditors. The Commission's accommodation of the Communications Act and the bankruptcy laws cannot be simplistically reduced to an either-or proposition. A balancing of interests is both necessary and proper." Hertz Broadcasting of Birmingham, Inc., 57 FCC 2d 183 (1976) (concurring statement).

a stay; (c) the probability of harm to third parties if the stay is granted; and (d) whether a stay would serve or disserve the public interest. Virginia Petroleum Jobbers Ass'n v. FPC 259 F.2d 921 (D.C. Cir. 1958).

6. Disregarding the first prong of the four-part test as inapplicable in this instance, the Bureau believes that MobileMedia has adequately satisfied the requirements for a temporary stay of this proceeding in order to allow the Company to prepare and submit documents seeking relief under the Second Thursday doctrine. However, the Bureau submits that the Commission should impose, with particularity, certain terms and conditions. For example, any stay that the Commission may grant in this proceeding should be for a finite period of time with explicit notice that extensions will not be entertained absent compelling reasons. MobileMedia, at p. 1 of its Emergency Motion, requests a stay of 10 months duration, but concedes, at p. 6, that this is a "minimum" requirement. The Bureau submits that MobileMedia should be required to articulate with specificity (a) the procedural and substantive requirements under federal bankruptcy law with applicable statutory deadlines, and (b) the Company's justification for seeking any additional time beyond such applicable statutory deadlines in order to prepare and file documents incident to a Second Thursday request for relief.³ With such information, the Commission may determine an appropriate duration for the stay. In addition, MobileMedia should be required as a condition to the grant

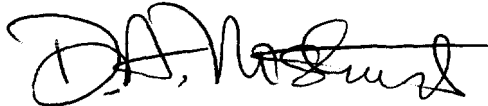
³ MobileMedia's assertion that it will require a significant amount of time -- up to 120 days -- to determine which business solution, sale or internal reorganization, will produce the highest enterprise value for the Company, is presently unsupported. Emergency Motion at p. 6. Furthermore, MobileMedia has not presented any precedent demonstrating that the Second Thursday doctrine is intended as a means to *maximize* recovery. Rather, the doctrine was intended to afford relief to innocent creditors who stood in a position to receive nothing following an adverse administrative adjudication against the licensee.

of any stay to file written progress reports with greater frequency than the quarterly reports it has proposed. Emergency Motion at p. 7. The Bureau believes that the filing of monthly progress reports would ensure that MobileMedia is proceeding forthwith to effectuate a Second Thursday remedy.

7. Based on the foregoing, the Bureau supports the grant of a limited stay of this proceeding in order to afford MobileMedia a reasonable amount of time to prepare and submit all pertinent documents incident to a Second Thursday request for relief. However, prior to the grant of a stay, MobileMedia should be required to specify terms and conditions of a stay that are acceptable to the Commission. Implicit in such a stay, should one be granted, would be an acknowledgement that MobileMedia may avail itself

of the relief afforded under the Commission's Second Thursday doctrine.⁴

Respectfully submitted,
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⁴ In the event a stay is granted, the Bureau requests that the Commission delegate to it authority to evaluate and process applications seeking relief under the Second Thursday doctrine. For 20 years after the establishment of the Second Thursday doctrine in 1973, the Commission retained authority to evaluate proposed Second Thursday applications. However, in NewSouth Broadcasting, Inc., 8 FCC Rcd 1272 (1993), the Commission delegated that authority to the Mass Media Bureau. In so doing, the Commission found that, consistent with similar delegations of authority, "the evolving nature of the Second Thursday policy has established a sufficient body of precedent to enable the staff to facilitate the processing of petitions and the resolution of hearing proceedings." Id. at ¶ 6.

The Mass Media Bureau was granted limited authority "to process those petitions that are consistent with established Commission policy and do not involve novel questions of fact, law or policy." Id. The Wireless Telecommunications Bureau acknowledges that the instant case is a case of first impression concerning the application of Second Thursday doctrine to a publicly traded, non-broadcast licensee. The Bureau submits that consideration of MobileMedia's applications for Second Thursday relief would be consistent with the underlying rationale for the Second Thursday doctrine, as discussed more fully above. By requesting delegated authority, the Bureau leaves to the Commission the novel threshold issue of whether to interpret the Second Thursday doctrine to include a large, publicly traded common carrier licensee operated by a debtor-in-possession. Thus, the Bureau seeks only the remaining authority, in this instance, to process any Second Thursday applications that MobileMedia may proffer.

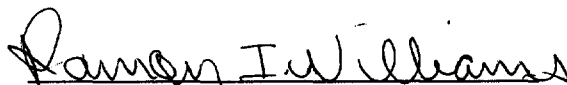
CERTIFICATE OF SERVICE

I, Ramon I. Williams, a clerk in the Enforcement Division, Wireless Telecommunications Bureau, certify that I have, on this 29th day of April 1997, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Comments on Emergency Motion" to:

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